

PB# 74-19

Joseph Ruscitti

Joseph Ruscitti 74-19

GENERAL RECEIPT

Town of New Windsor, N. Y.

No 2061

74-19

Received of Shirley Hassdenteufel - sec. T. Planning Board ^{Aug. 15} 1974
none Dollars

For approval for Joseph Ruscitto removing dirt at Cedar Ave site
 DISTRIBUTION

FUND	CODE	AMOUNT
<u>no money</u>		

Town Clerk
 TITLE
 BY John M. Tuckwell

BERNARD KESSLER, P.E.

Consulting Engineer

6 FLEETWOOD AVENUE

Spring Valley, N.Y. 10977

(914) 356-0217

July 8, 1974

To: Town of New Windsor Planning Board

Re: Ruscitti Site

It is my opinion that the preparation of this site for homebuilding falls within the category of a sand or gravel pit which is a prohibited use in this zone. Even if the material is removed without money exchange, the operation is still that of a sand pit. The zoning ordinance is directed against the type of use, rather than the commercial aspects of the use. I suggest that the plan be referred to the Zoning Board for a variance.

Bernard Kessler

p/a

MEMORANDUM

TO: TOWN OF NEW WINDSOR PLANNING BOARD

FROM: ANTHONY G. AUSTRIA, JR.

RE: APPLICATION OF JOSEPH RUSCITTI

DATE: JULY 5, 1974

The above named applicant has sought approval of the Town of New Windsor Planning Board to change the contour of certain property in the Town of New Windsor. The applicant has submitted certain topographical maps, which have been reviewed and approved by the Planning Board engineer. The question now posed is whether or not it is within the jurisdiction of the Town of New Windsor Planning Board to grant all necessary approvals.

Section 130 of the Town Law of the State of New York, provides that the Town Board may, by ordinances, rules or regulations, set forth requirements concerning excavated lands, sand pits, stripping of top soil, etc.

The Town Of New Windsor has enacted provisions concerning Street Construction (Chapter 33 of Code) and drainage provisions, (Local Law No. 5 1968), both of which sections require approval by the Planning Board. The Town of New Windsor, however, has not enacted a procedure whereby licenses, permits, etc., may be obtained for the type of work sought to be done by the applicant.

The Planning Board, however, has been directed to review certain topographical changes under many sections of the Town

Code and would appear to have the authority to review the proposed changes herein. The applicant has prepared and submitted maps of the proposed changes, and these changes have been reviewed by the Planning Board engineer, and approved by the Planning Board itself. The sole question that remains is whether or not the applicant may proceed based solely on the approval of the Planning Board.

The land in question is zoned RB. Under the present zoning removal of top soil, etc., is a permitted conditional use and an RA district, provided approval of the ZBA has been sought and obtained. Insofar as the RB district is concerned it would appear that Section 48-7 (A) (1) specifically excludes sand and gravel pits in an RB district.

CONCLUSION

In view of the foregoing, therefore, it would appear that the applicant should seek a use variance from the ZBA. The question of what the applicant intends to do with the top soils, etc., would appear to be instrumental in determining the exact nature of the applicant's proposed use of his land. Since the Planning Board has reviewed the proposed topographical changes and approved same, it would appear that no further action need be taken by the Planning Board. In the event of a possible problem, however, the applicant should seek the approval of the Zoning Board of Appeals.

ZONING BOARD OF APPEALS
Town of New Windsor, New York 12550

RECEIVED
AUG 5 1974

NEW WINDSOR PLANNING BOARD

7 Franklin Avenue
New Windsor, N. Y.
July 21, 1974

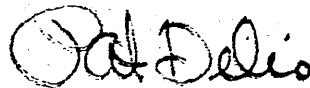
Anthony J. Austria, Esq.
158 Grand Street
Newburgh, N. Y. 12550

RE: Interpretation - Joseph Ruscitti Property
Cedar Avenue

Dear Mr. Austria:

Regarding your communication on the Ruscitti property,
please refer to the Board's interpretation on the attached
minutes of the July 15, 1974 meeting.

Yours truly,



PATRICIA DELIO, Secretary

/pd

Enc.

cc: New Windsor Planning Board
555 Union Avenue
New Windsor, N. Y. 12550

Attn: Joseph Loscalzo, Chairman

Mrs. Budney: It was mostly sand when it was tested a longtime ago.

Mr. Wygant: This is no different from one person leveling a piece of property.

Mr. Stortecky: You are not going to screen it or anything like that?

Mr. Ruscitti: Just load it up and take it away.

Mr. Stortecky: Are you going to create much dust?

Mr. Ruscitti: This can be controlled with calcium chloride.

Mr. Stortecky: How much are you going to take out?

Mr. Ruscitti: Whenever I get time to take it out. I have no plans for anyone buying it as yet but I hope after I get it graded, I can sell it.

INTERPRETATION; After careful study by the Zoning Board of Appeals, the following motion was made by Mrs. Budney, seconded by Mr. Stortecky:

Mr. Joseph Ruscitti having appeared before the Zoning Board of Appeals of the Town of New Windsor, pursuant to the written request of Anthony Austria, attorney for the Planning Board, for specific permission of the ZBA to conduct excavation operations on his property located in the Town of New Windsor, for the purposes of changing the contour of the land, after considerable discussions and queries on behalf of the Board, it was the determination of the Board that the applicant's request was in the nature of seeking permission of the Board to change the simple topography of his land and not to conduct a sand and gravel pit and it would not in any substantial manner change the nature of the neighborhood, nor degrade the value of the surrounding properties, and the application should, therefore be permitted.

ROLL CALL: Mrs. Budney - Yes
Mr. Jargstorf - Yes
Mr. Stortecky - Yes
Mr. Wygant - Yes

Motion carried by a unanimous vote.

Secretary to inform the attorney for the Planning Board, Mr. Austria, of the interpretation regarding the Ruscitti property.

There being no other business to bring before this Board, motion was therefore made by Mr. Stortecky, seconded by Mr. Jargstorf to adjourn. Motion carried, all ayes. Meeting adjourned.

Respectfully submitted,

Patricia Delio

Patricia Delio, Secretary

